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8 BEFORE THE DEPARTMENT OF MANAGED HEALTH CARE
9 OF THE STATE OF CALIFORNIA

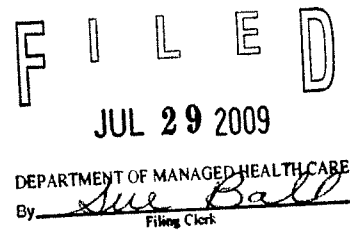
10 IN THE MATTER OF:)	Enforcement Matter No.: 04-459
)	
11)	
12 International Association of Benefits,)	CEASE AND DESIST ORDER
)	
13 Respondent.)	Health and Safety Code section 1349

14
15 **To: International Association of Benefits**
16 **701 Highlander Blvd, Suite 500**
17 **Arlington, TX 76015**

18 The Director of the Department of Managed Health Care (the Department), by and
19 through her designee, Assistant Deputy Director Amy L. Dobberteen, after investigation,
20 determines as follows:

21 **I. INTRODUCTORY STATEMENT**

22 1. California Health and Safety Code, section 1349 requires entities arranging for
23 health-care services to first obtain a license from the California Department of Managed Health
24 Care (Department). International Association of Benefits (Respondent) is operating as a health
25 care service plan as defined in Health and Safety Code, section 1345(f)(1), and is required to
26 obtain a license under the Knox-Keene Health Care Service Plan Act of 1975, as amended, (the
27 Knox-Keene Act). Specifically, Respondent is undertaking to arrange for the provision of health
28 care services to California consumers by connecting members to participating health care



providers in exchange for periodic monthly payments. Respondent's failure to obtain a license while operating as a health care service plan violates section 1349 of the Knox-Keene Act and subjects it to the enforcement powers of the Department.

2. Upon first receiving notice of Respondent's acts through referral by the Texas Better Business Bureau followed by additional California consumer complaints, the Department issued an Order RE Licensure (Order) on July 19, 2005, which directed Respondent to begin the formal licensure process and bring its plan into conformance with Knox-Keene Act requirements.¹ All deadlines imposed by the Order have been ignored. Additionally, complaints continue to be lodged against Respondent by former California Plan members seeking reimbursement, the latest as recently as June 3, 2009. As of the date of this filing, Respondent has taken no affirmative steps to comply with the Department's Order. Moreover, Respondent's representative verbally indicated to the Department that the Plan would not pursue licensing in California, but intended to pursue licensing in Florida.

3. Therefore, the Department, by this Order, hereby directs Respondent to cease and desist from any further unauthorized and unlawful activity in the State of California.

II. LEGAL AUTHORITY

4. The Director of the Department is vested with the responsibility to administer and enforce the Knox-Keene Act. The intent and purpose of the Knox-Keene Act is to promote the delivery and quality of health and medical care to the people of California who enroll in a health care service plan by, among other things:

Prosecuting malefactors who make fraudulent solicitation or who use deceptive methods, misrepresentations, or practices, which are inimical to the general purpose of enabling a rational choice for the consumer public. (Health & Saf. Code, §§ 1341 and 1342(c).)

5. Health and Safety Code, section 1345(f)(1) defines a health care service plan to mean:

¹ <http://www.dmh.ca.gov/library/enforcements/actions/prtch/16532.pdf>.

1 Any person who undertakes to arrange for the provision of health care services to
2 subscribers or enrollees, or to pay for or to reimburse any part of the cost for those
3 services, in return for a prepaid or periodic charge paid by or on behalf of the
4 subscribers or enrollees.

5 6. The Legislature has plainly evidenced its intent that the Knox-Keene Act applies
6 to entities such as Respondent in Health and Safety Code, section 1399.5, which provides:

7 It is the intent of the Legislature that the provisions of this chapter shall be
8 applicable to any private or public entity or political subdivision which, in return
9 for a prepaid or periodic charge paid by or on behalf of a subscriber or enrollee,
10 provides, administers or otherwise arranges for the provision of health care
11 services . . .

12 7. Any person conducting business as a health care service plan is required to have a
13 license under the Knox-Keene Act pursuant to Health and Safety Code, section 1349, which
14 provides:

15 It is unlawful for any person to engage in business as a plan in this state or to
16 receive advance or periodic consideration in connection with a plan from or on
17 behalf of persons in this state unless such person has first secured from the
18 director a license, then in effect, as a plan or unless such person is exempted by
19 the provisions of Section 1343 or a rule adopted hereunder. A person licensed
20 pursuant to this chapter need not be licensed pursuant to the Insurance Code to
21 operate a health care service plan or specialized health care service plan unless the
22 plan is operated by an insurer, in which case the insurer shall also be licensed by
23 the Insurance Commissioner.

24 8. The Director is empowered to enforce compliance with the Knox-Keene Act by
25 Health and Safety Code, section 1391(a)(1), which provides in relevant part:

26 The director may issue an order directing a plan, solicitor firm, or any
27 representative thereof, a solicitor, or any other person to cease and desist from
28 engaging in any act or practice in violation of the provisions of this chapter, any
rule adopted pursuant to this chapter, or any order issued by the director pursuant
to this chapter.

9. On September 26, 2006, the Department adopted *In the Matter of the Cease and
Desist Order Issued to: THE CAPELLA GROUP, INC., d/b/a CARE ENTRÉE*, as a Precedent
Decision.² *Care Entrée* settled in the affirmative the issue of whether arranging for the provision

² *In the Matter of the Cease and Desist Order Issued to: THE CAPELLA GROUP, INC., d/b/a CARE
ENTRÉE*, September 26, 2006, Department of Managed Health Care, O.A.H. No. N2005-10-840,
<http://www.dmhc.ca.gov/library/enforcements/actions/cgi/21066.pdf>.

1 of discounted prices constituted a “health care service plan” within the plain meaning of Health
2 and Safety Code, section 1345(f)(1), therefore subjecting discount plans to Departmental
3 oversight. In interpreting section 1345, the *Care Entrée* decision concluded that “the legislature,
4 by using a broad definition of health care service plan, intended to cast a wide net, capturing all
5 activity related to provision of health care.” (*Care Entrée*, Discussion and Legal Conclusions at
6 9.)

7 **III. VIOLATIONS OF LAW**

8 10. Respondent is acting as a health care service plan, within the meaning of Health
9 and Safety Code, section 1345(f)(1), and under the precedent set in *Care Entrée* regarding
10 discount plans, by undertaking to arrange for the provision of discounted health care service
11 prices to members in return for a periodic monthly charge paid by the members:

12 Consumers who purchase Respondent’s services purchase the assurance that they
13 will have health care available to them at affordable prices. Consumers who
14 purchase health insurance...purchase the assurance that they will have health care
15 available to them either without additional charge or with reduced charges. All of
16 these plans, including Respondent’s, connect the member to the participating
17 provider. All of these plans provide “discounts” in the sense that by participating
18 in the plan, the members do not pay the full price of medical services that would
19 otherwise be imposed upon them. (*Care Entrée* at 12.)

17 Respondent, therefore, is engaging in business as a health care service plan in the state of
18 California and is receiving advance and periodic consideration in connection with a plan from, or
19 on behalf of, persons in California, without having first secured a license from the Department.
20 This conduct violates Health and Safety Code, section 1349. Respondent continues to solicit
21 California consumers with unlicensed health care services and has wholly failed to take any
22 affirmative steps to obtain a license in violation of the Department’s prior Order.

23 **Order RE Licensure Violations:**

24 11. Respondent failed to contact the Department and obtain a login identification
25 number and a password necessary for the licensure process by September 23, 2005. (Order at 1.)

26 12. Respondent failed to file an application for licensure under the Knox-Keene Act
27 by October 31, 2005. (Order at 2.)
28

1 13. Respondent, having thirty (30) calendar days from the issuance of the Order to do
2 so, failed to implement operational changes necessary and sufficient for full compliance with the
3 requirements of Health and Safety Code, sections 1365(a), 1365.5, 1366, 1367 subdivisions (b),
4 (c), (d), (e)(1), (f), (g), and (h)(1), 1368.02(b), 1373(a), 1379, 1381, 1384 subdivisions (a), (d),
5 and (f), 1385, and 1395. (Order at 4.)

6 14. Respondent, having thirty (30) calendar days from the issuance of the Order to do
7 so, failed to establish and submit to the Department for approval a grievance system in
8 compliance with Health and Safety Code, sections 1368 and 1368.01; and California Code of
9 Regulations, title 28, section 1300.68, as applicable. (Order at 5.)

10 15. Respondent, having thirty (30) calendar days from the issuance of the Order to do
11 so, failed to revise, as necessary, all of its materials provided to or made available to its members
12 for full compliance with the requirements of Health and Safety Code, sections 1363 and 1363.1;
13 and California Code of Regulations, title 28, sections 1300.63, 1300.63.1, 1300.63.2 and
14 1300.67.4, as applicable. (Order at 6.)

15 16. Ordered to have commenced on September 1, 2005, Respondent failed to submit
16 to the Department any monthly reports of all complaints by California members, which were to
17 include the reason for each complaint and the disposition of each. (Order at 8.)

18 17. Respondent, having thirty (30) calendar days from the issuance of the Order to do
19 so, failed to demonstrate compliance with any and all advertising and marketing materials to be
20 used in connection with the sale of memberships pursuant to Health and Safety Code, sections
21 1360, 1360.1 and 1361. (Order at 9.)

22 18. Respondent failed to cease the sale or offer of any insurance product or coverage
23 under any group policy in connection with the sale of memberships. (Order at 10.)

24 19. Respondent, having thirty (30) calendar days from the issuance of the Order to do
25 so, failed to demonstrate to the satisfaction of the Department, that it is providing a quantifiable
26 and non-illusory benefit to its members in California. (Order at 11.)
27
28

1 20. The Order stipulated:

2 The failure of any condition required during the licensure process, or as listed
3 above, may result in the issuance of a Cease and Desist Order, as the Department
4 deems necessary. (Order at 13.)

5 Respondent violated all material requirements of the Order.

6 **IV. CEASE AND DESIST ORDER**

7 Based on the foregoing, the Director finds that Respondent has violated Health and
8 Safety Code, section 1349.

9 **THEREFORE**, the Director of the Department of Managed Health Care, by and
10 through her designee, Assistant Deputy Director Amy L. Dobberteen, pursuant to Health and
11 Safety Code, section 1391, **ORDERS AS FOLLOWS:**

12 1. That Respondent, and any of its directors, officers, trustees, managers, affiliates,
13 agents, and all persons participating with them or acting in concert with them, shall immediately

14 **CEASE AND DESIST FROM:**

- 15 a. Operating in California without a Knox-Keene Act license;
16 b. Promoting any further advertisements or solicitations to California
17 residents;
18 c. Conducting any enrollment activities in California for health care
19 memberships, including, but not limited to, medical, dental,
20 hospitalization, and pharmacy;
21 d. Taking, receiving, or forwarding any application for health care
22 memberships from California residents; and
23 e. Collecting or receiving, in full or in part, any payments for health-
24 care memberships from or on behalf of California residents.

25 2. Respondent shall disclose conspicuously in any advertisement or solicitation that
26 may reasonably be viewed by residents of the State of California; including, but not limited to,
27 any Internet web page or advertisement, that its health care membership product is not available
28 in the State of California.

1 3. Respondent shall make refunds in accordance with the terms of its membership
2 agreement to any enrollee who indicates a desire to cancel his or her membership, or to any
3 enrollee who meets the legal standard for rescission. Respondent shall also prospectively allow
4 cancellations without condition, limitation, or reservation.

5 4. Within 30 days of the date of this Order, Respondent shall provide a copy of its
6 membership list to the Department. This list shall include its California members' names,
7 addresses, telephone numbers, identification numbers, dates of membership, and amount of
8 monies received from member.

9 5. Within 30 days of the date of this Order, Respondent shall provide a copy of this
10 Order and a notice of cancellation of membership to every California enrollee. The notice of
11 cancellation shall inform members that they may contact the Department of Managed Health
12 Care's Help Center to obtain assistance at 1-888-466-2219.

13
14 Dated: July 29, 2009

LUCINDA EHNES
Director
Department of Managed Health Care

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17
18 By: 

19 AMY L. DOBBERTEEN
20 Assistant Deputy Director
21 Office of Enforcement
22 Department of Managed Health Care
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